
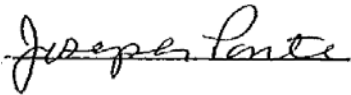


<b>POLICY TITLE: PRISONER DISCIPLINE</b>  <b>POLICY NUMBER: 20.1</b>  <b>CHAPTER 20: PRISONER DISCIPLINE</b>		<b>PAGE <u>1</u> OF <u>25</u></b>
	<b>STATE of MAINE</b> <b>DEPARTMENT OF CORRECTIONS</b>  <b>Approved by Commissioner:</b>  	<b>PROFESSIONAL STANDARDS:</b>  <b>See Section VII</b>
<b>EFFECTIVE DATE:</b> <b>July 30, 2002</b>	<b>LATEST REVISION:</b> <b>April 15, 2013</b>	<b>CHECK ONLY IF</b> <b>APA [ X ]</b>

## I. AUTHORITY

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Sections 1402, 1403, and 3032.

## II. APPLICABILITY

All Departmental Adult Facilities

## III. POLICY

It is the policy of the Department of Corrections to designate prisoner disciplinary violations and dispositions for the purpose of maintaining the orderly management of correctional facilities, as well as safety and security. This policy also applies to prisoners of the Department who are outside a Departmental facility at the time of the violation. It is also the policy of the Department of Corrections to assure that, in all matters of prisoner discipline, procedures that are consistent with the constitutional and statutory rights of the individual prisoner shall be followed. Disciplinary action is not to be capricious or retaliatory in nature, and a fair and impartial disposition shall be made in each case. Each facility shall ensure that all prisoners are provided with the information outlined in this policy and procedures. This policy and procedures shall be reviewed annually and revised as necessary.

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## **VI. PROCEDURES**

### **Procedure A: Informal Resolution**

1. Any facility staff that observes, receives a report of, or otherwise discovers prisoner conduct that is considered a violation of any rule shall dispose of such incident informally or formally.
2. To resolve a rule violation informally, the facility staff may propose to the prisoner to counsel, warn, verbally reprimand, assign extra work, require restitution if property was destroyed or damaged, or impose restrictions on privileges. Any extra work, restitution, or restrictions shall be:
  - a. In accordance with informal sanctions approved by the Commissioner;
  - b. Imposed by agreement between the prisoner and the staff who observed or discovered the behavior (or if observed or discovered by a person who is not facility staff, by agreement between the prisoner and the facility staff to whom the conduct was reported). The agreement shall be in writing, include the prisoner's waiver of his/her right to a formal hearing on the rule violation, and be signed by the prisoner, the facility staff, and the Shift Supervisor or Unit Manager. (see Attachment A, Informal Resolution of Rule Violation Agreement);
  - c. Imposed for no more than seven (7) days, which may be consecutive or intermittent (if extra work or restrictions); and
  - d. Documented by recording an entry in CORIS.
3. If the prisoner refuses the proposed informal resolution, then the staff shall complete and submit a disciplinary report in accordance with the formal resolution process.
4. Any proposed informal resolution of a rule violation that has been agreed to by a prisoner shall be reported immediately to a Shift Supervisor or Unit Manager for approval, modification, or disapproval. If the Shift Supervisor or Unit Manager

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does not approve the proposed informal resolution, he/she may: (1) modify the resolution, with the agreement of the prisoner, (2) direct the staff to proceed formally, or (3) direct the staff to drop the issue.

5. The Shift Supervisor, Unit Manager, or designee, shall ensure an approved informal resolution is satisfactorily completed and documented on the Informal Resolution Rule Violation Agreement and in CORIS.
6. A rule violation that is informally resolved does not constitute a disciplinary violation for the purpose of determining eligibility for a furlough pass or furlough leave or for participation in any other program. However, a prisoner counsel substitute receiving an informal resolution may not continue in that position.
7. The conduct leading to an informal resolution may be one factor used in considering whether to actually grant a furlough pass or furlough leave or approve participation in any other program.
8. If a prisoner does not abide by the informal resolution, the prisoner shall be charged with the original rule violation, as well as a disciplinary violation of Informal or Formal Resolution.

#### **Procedure B: Formal Resolution**

1. Any facility staff that observes, receives a report of, or otherwise discovers prisoner conduct that is considered a violation of any rule shall dispose of such incident informally or formally.
2. Any proposal to proceed with a formal resolution of a rule violation without first attempting an informal resolution shall be reported immediately to a Shift Supervisor or Unit Manager for approval or disapproval. If the Shift Supervisor or Unit Manager does not approve proceeding with a formal resolution, he/she may direct the staff to (1) attempt an informal resolution with the prisoner, or (2) drop the issue. If the Supervisor or Manager approves proceeding formally, the following procedures apply.
3. When facility staff considers a formal resolution of an alleged rule violation necessary for proper discipline and control, and the Shift Supervisor or Unit Manager agrees, or a prisoner refuses a proposed informal resolution, or a prisoner fails to abide by an agreed to informal resolution, the staff shall complete a Disciplinary Report (see Attachment B) and deliver it personally to a Shift Supervisor or Unit Manager prior to the end of the next day that the staff is working, unless that would be more than 72 hours, in which case the staff shall complete and deliver the report prior to going off duty. When the charge involves drug or alcohol testing, the request for test form, a printout, photocopy, or photograph of the test results, and the chain of custody form, if any, shall be

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attached to and become part of the disciplinary report. The timeframe for submission of the disciplinary report begins when the behavior is observed or discovered by facility staff. If a violation is observed or discovered by any person who is not facility staff and is reported to facility staff, the timeframe for submission of the disciplinary report begins after receipt of the report by facility staff.

4. The Shift Supervisor or Unit Manager receiving the disciplinary report shall review the report with the reporting facility staff without unnecessary delay to ensure that the report clearly sets forth the incident and the charge. If it does not, the Supervisor or Manager shall assist the reporting staff in writing the report more clearly. The Shift Supervisor or Unit Manager shall sign the report once approved.
5. A prisoner may not be segregated or otherwise restricted merely because of a pending discipline. However, as a separate matter, a prisoner who may pose a continuing threat may be placed on emergency observation status and otherwise restricted as provided in Policy 15.1, Administrative Segregation Status. This is not punishment and shall not be considered in determining the appropriate disposition for a disciplinary violation.
6. If the alleged violation might constitute Murder or a Class A, B, or C crime, the Chief Administrative Officer of the correctional facility shall refer the matter to the appropriate prosecutor. If the alleged violation might constitute any other crime, the Chief Administrative Officer of the correctional facility may refer the matter to the appropriate prosecutor. Even when a decision to refer for prosecution is made, the alleged violation may be processed as a disciplinary matter. The time frames for processing the alleged violation as a disciplinary matter may be suspended by the Chief Administrative Officer if processing the alleged violation as a disciplinary matter might compromise a criminal investigation or prosecution.
7. Once a disciplinary report has been reviewed and signed by the receiving Shift Supervisor or Unit Manager, that Supervisor or Manager shall forward the report to a security staff person for investigation.
8. The investigator shall be someone other than the receiving Shift Supervisor or Unit Manager and shall not be involved in either the incident or its write up. The investigator shall initiate an investigation into the alleged violation within twenty-four (24) hours and shall complete the investigation without unnecessary delay. The investigator shall read the disciplinary report to the prisoner and ask the prisoner if he/she wishes to make a statement. If the investigator cannot contact the prisoner due to the prisoner's unavailability (e.g., at court, in the hospital, or on escape), the contact shall take place as soon as possible after the prisoner becomes available. The prisoner shall notify the investigator of any known witnesses. The investigator shall forward the prisoner's statement, including the

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names of any known witnesses, to a staff person designated by the facility Chief Administrative Officer to process disciplinary paperwork.

9. The facility Chief Administrative Officer shall designate facility staff to act as disciplinary hearing officers. No person may act as a disciplinary hearing officer unless he/she has been trained in this policy and procedures. The training shall be documented in the staff person's training file.
10. Only a designated disciplinary hearing officer, or the Chief Administrative Officer, or designee, may dismiss a disciplinary report and only if the facts as described in the disciplinary report do not constitute a violation, the timeframe for completing and submitting the disciplinary report was not adhered to, or there appears to have been a violation of the prisoner's statutory or constitutional rights. Before dismissing a report due to an apparent violation of the prisoner's rights, the disciplinary hearing officer or Chief Administrative Officer, or designee, shall consult with the Department's legal representative in the Attorney General's Office. Whenever a report is dismissed, the person making the decision to dismiss shall document the reason(s) for the dismissal in writing.
11. If the disciplinary report has not been dismissed, a staff person designated to process disciplinary paperwork shall provide to the prisoner without unnecessary delay a Letter of Notification of Disciplinary Hearing (see Attachment C); a list of counsel substitutes; and copies of the disciplinary report, other reports of the incident (unless confidential), any photographs relating to the incident (unless it would compromise safety or security), and the prisoner's statement, if any, to the investigator. Under no circumstances may a prisoner be provided a photograph of a victim, personal information relating to a victim (e.g., social security number, personal address, or phone number), an audio or video recording, or an actual exhibit.
12. The notification shall inform the prisoner of the name and class of the violation(s) charged, the name of the disciplinary hearing officer scheduled, and that, if he/she wishes to call witnesses at the hearing, he/she shall inform the disciplinary hearing officer of the witnesses he/she wishes to call within twenty-four (24) hours after he/she receives the notification.
13. The disciplinary hearing officer shall be someone other than the receiving Shift Supervisor or Unit Manager and shall not be involved in either the incident or its write up, but may be a person who merely processed the disciplinary paperwork. The fact that a person took some action outside the disciplinary process after the incident was over including, but not limited to, placing the prisoner on emergency observation status, does not disqualify the person from acting as the disciplinary hearing officer. A change in the scheduled disciplinary hearing officer does not require a new notification to the prisoner.

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14. The notification shall also inform the prisoner that, if he/she wishes to be represented by counsel substitute, he/she shall inform the disciplinary hearing officer of the counsel substitute he/she has selected within twenty-four (24) hours after he/she receives the notification. It is the responsibility of the prisoner to secure counsel substitute and inform him/her of the date and time of the hearing. Facility staff shall facilitate communication between the prisoner and the counsel substitute he/she requests. If the date or time of the hearing is changed, the prisoner shall receive written notice of the change sufficiently in advance of the hearing to permit the attendance of his/her counsel substitute, if any.
15. A counsel substitute is a staff member of the Department of Corrections or a prisoner approved by the Chief Administrative Officer who voluntarily assists a prisoner in preparing and presenting his/her defense at a disciplinary hearing. If it is determined at any time during the disciplinary process that a prisoner is not capable of preparing and presenting his/her defense effectively on his or her own behalf, the disciplinary hearing officer shall assign a staff counsel substitute to assist the prisoner and shall continue the disciplinary hearing, if necessary, to permit the counsel substitute to effectively assist the prisoner. A prisoner may not be approved as a counsel substitute unless he/she has not been found guilty of a Class A or B disciplinary violation for six (6) months prior to approval. The prisoner must remain free of disciplinary violations, whether resulting in an informal or formal resolution. No person may act as counsel substitute unless he/she has been trained in this policy and procedures. Each facility shall have a minimum of one (1) facility staff member trained and available to act as a counsel substitute. The training shall be documented in the staff person's training file.

### **Procedure C: Disciplinary Hearing**

1. The disciplinary hearing officer shall hold a hearing on the alleged violation without unnecessary delay, provided that the hearing may not be held sooner than twenty-four (24) hours after the prisoner receives the notification of the hearing, unless the prisoner waives, in writing, his/her right to the twenty-four (24) hour notice. The hearing shall be held no later than seven (7) days, excluding weekends and holidays, after the prisoner receives the notification of the hearing, unless it is continued for good cause shown. If a hearing cannot take place within the seven (7) days due to the prisoner's absence from the facility (e.g., court, hospital, escape), it shall be scheduled for as soon as practicable, but no later than seven (7) days, excluding weekends and holidays, after the prisoner's return to Departmental custody. The reason(s) for any delay or for any continuance shall be documented.
2. At any time prior to his/her hearing, the prisoner may waive, in writing, his/her right to a formal hearing. Such waiver may be made in connection with either a

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plea of guilty or a plea of no contest. The waiver shall be submitted to the disciplinary hearing officer, who shall review the case with the prisoner charged in order to recommend an appropriate disposition. By waiving his/her right to a formal hearing, the prisoner waives his/her right to appeal the finding of guilt. He/she does, however, maintain his/her right to appeal the recommended disposition.

3. Either before or during the hearing, the disciplinary hearing officer may continue the hearing for good cause shown, but in no case may the continuance be for more than thirty (30) additional days (see Attachment D, Notice of Continuation-Disciplinary Hearing). Requests to the disciplinary hearing officer for continuance made by the prisoner shall be in writing and shall be submitted to the disciplinary hearing officer prior to the hearing, unless the cause for the continuance arises during the hearing. Generally, hearings will not be continued to permit recreation, visits, programs, or other similar activities.
4. Either before or during the hearing, the disciplinary hearing officer may dismiss the disciplinary report if and only if one of the reasons set out in Procedure B. 10 exists.
5. The prisoner charged has a right to be present at the hearing, which right may be waived by the prisoner. He/she also has the right to be assisted at the hearing by a counsel substitute. The disciplinary hearing officer may, however, conduct the hearing in the absence of the prisoner charged or counsel substitute, if the prisoner or counsel substitute fails to appear for the hearing after he/she has been duly notified or if, immediately prior to or during the hearing, the prisoner's behavior or counsel substitute's behavior is inconsistent with the hearing process to the extent that the prisoner or counsel substitute must be excluded or removed from the hearing room. If a hearing is conducted without the prisoner or counsel substitute being present, the circumstances of the prisoner's or counsel substitute's absence shall be documented in the written summary.
6. At the opening of the hearing, the disciplinary report and charge(s) shall be read and fully explained to the prisoner by the disciplinary hearing officer. The prisoner shall enter a plea to the charge(s). The prisoner shall be given an opportunity to reply to the charge(s). The disciplinary hearing officer may ask the prisoner questions.
7. The disciplinary hearing officer may permit the prisoner, or his/her counsel substitute, to call one or more witnesses and to question any witness who testifies in person or by telephone at the hearing. The disciplinary hearing officer may require that the prisoner, or the counsel substitute, question any witness indirectly by relaying questions through the disciplinary hearing officer. Testimony from witnesses may be presented in writing with the permission of the disciplinary hearing officer. A prisoner shall not be given permission to have a

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witness from outside the correctional facility physically brought to the disciplinary hearing. However, testimony from an outside witness may be presented by telephone or in writing with the permission of the disciplinary hearing officer. The disciplinary hearing officer may call one or more witnesses and question any witness who testifies in person or by telephone at the hearing.

8. Permission to call or question a witness, including a witness testifying by telephone, shall not be unreasonably withheld or restricted. Whenever permission to call or question a witness is withheld or restricted, the disciplinary hearing officer shall document the reason(s) in the written summary. If a witness is to be permitted to testify, the disciplinary hearing officer shall take all reasonable steps to ensure the testimony of the witness is presented at the hearing. Whenever permission has been granted to call a witness and the witness does not testify, the disciplinary hearing officer shall document the reason(s) in the written summary.
9. The disciplinary hearing officer may permit the prisoner, or his/her counsel substitute, to present or examine exhibits. Permission to present or examine exhibits shall not be unreasonably withheld or restricted. The disciplinary hearing officer may present and examine exhibits.
10. Whenever permission to present or examine exhibits is withheld or restricted, the disciplinary hearing officer shall document the reason(s) in the written summary. When examination by a prisoner of an exhibit would compromise security or safety, the disciplinary hearing officer may permit the prisoner to examine a photograph of the exhibit or may permit an examination of the actual exhibit or a photograph of the exhibit by staff acting as counsel substitute. When a prisoner's listening to an audio recording or viewing a video recording of an incident would compromise security or safety, the disciplinary hearing officer may permit staff acting as counsel substitute to listen to or view the recording.
11. When confidential information is necessary to support a finding of guilt, a written summary of the confidential information that does not reveal the identity of the informant shall be presented at the hearing in the presence of the prisoner. The Shift Supervisor or Unit Manager who received the disciplinary report shall ensure that the written summary is provided to the disciplinary hearing officer prior to the hearing, and the disciplinary hearing officer shall ensure that the written summary is read to the prisoner or otherwise presented at the hearing and is made part of the record of the hearing.

The Shift Supervisor or Unit Manager who received the disciplinary report shall ensure that the identity of the informant, the detailed statement of the informant, and the reason(s) for relying on the informant or the information is provided to the disciplinary hearing officer prior to the hearing, and the disciplinary hearing officer shall ensure that this confidential information is not presented at the hearing or otherwise revealed to the prisoner who is the subject of the hearing, a

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prisoner acting as counsel substitute, or any other prisoner. This confidential information shall be retained in accordance with Department policy and procedure but shall not be made part of the disciplinary documentation accessible to the prisoner.

12. Upon completion of the hearing, the disciplinary hearing officer shall determine guilt or innocence for any charge not dismissed. The finding of guilt or innocence must rest solely upon evidence produced at the hearing, including, but not limited to, the disciplinary report, the prisoner's statement, if any, to the investigator, any exhibits, and the testimony of any witnesses. In the case of a charge for which possession is an element, and more than one prisoner exercises control over an area in which the item was found, a finding of possession by one or more prisoners may be based on a determination that there is some evidence that the prisoner or prisoners exercised control over the item. Otherwise, a finding of guilt must be based on a determination that it is more probable than not that the prisoner committed the violation. A positive drug or alcohol test result (confirmed by an independent test, if required by the Department's Drug and Alcohol Testing Policy) is sufficient to meet this standard for the disciplinary violations of Alcohol, Trafficking, Trafficking Marijuana, or Under the Influence or Taking of Substances, whichever is applicable. A prisoner may be found guilty of a lesser violation than the one charged, provided that the lesser violation is of the same nature as the violation charged. The disciplinary hearing officer shall recommend a disposition authorized for each violation of which the prisoner was found guilty. The disciplinary hearing officer shall separately specify the recommended disposition for each charge a prisoner is found guilty of.
13. In the case of a prisoner who has been found guilty and who has been identified as mentally ill or developmentally disabled, the disciplinary hearing officer shall consult with the appropriate mental health staff prior to determining the disposition.
14. The prisoner shall be advised of the decision and the basis for it and of the disposition recommended for each guilty finding. The disciplinary hearing officer shall prepare a written summary of the evidence presented, the decision, a statement of the reason(s) and evidence relied on for the decision and the recommended disposition for each guilty finding (see Attachment E, Disciplinary Hearing Summary). The summary shall also contain documentation of any consultation with mental health staff.
15. A copy of this summary shall be provided to the prisoner, as soon as possible following the conclusion of the hearing. This summary must be provided within twenty-four (24) hours of the conclusion of the hearing, unless the prisoner has less than forty-eight (48) hours until release, in which case, it must be provided

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immediately following the conclusion of the hearing. Upon request, a copy shall be provided to the reporting staff.

16. When the prisoner is provided the summary, the prisoner shall be advised by the disciplinary hearing officer that he/she may appeal the decision and recommended disposition within fifteen (15) days (or other timeframe for a prisoner who has less than fifteen (15) days until release) to the Chief Administrative Officer, or designee, of the facility where the disciplinary hearing was held. The disciplinary hearing officer shall ask the prisoner whether the prisoner wishes to waive the right to appeal.
17. If the prisoner signs the waiver or if a prisoner who does not sign the waiver does not submit a timely appeal, no appeal will be considered and the prisoner's Unit Manager shall ensure that the disposition(s) are imposed.
18. If the prisoner does not sign the waiver, an appeal (see Attachment F) may be submitted to the Chief Administrative Officer, or designee, within fifteen (15) days (or other timeframe for a prisoner who has less than fifteen (15) days until release) of the prisoner's receipt of the summary. If a timely appeal is submitted, the Chief Administrative Officer, or designee, shall review and consider the appeal, the decision, and the recommended disposition. The timeliness of the appeal is determined by the date and time it is received by the Chief Administrative Officer, or designee.
19. Prisoners shall have the right to appeal the disciplinary decision and the recommended disposition made by the disciplinary hearing officer.
  - a. For prisoners who have at least fifteen (15) days until release, then, within fifteen (15) days from the prisoner's receipt of the summary of the disciplinary hearing officer's decision and recommended disposition, a prisoner found guilty may submit to the Chief Administrative Officer, or designee, an appeal, with reasons therefore, prepared by the prisoner or counsel substitute on a form provided to the prisoner by the disciplinary hearing officer.
  - b. For prisoners who have less than fifteen (15) days until release, no later than one (1) hour prior to release, a prisoner found guilty may submit to the Chief Administrative Officer, or designee, an appeal, with reasons therefore, prepared by the prisoner or counsel substitute on a form provided to the prisoner by the disciplinary hearing officer.
20. The Chief Administrative Officer, or designee, may affirm, modify, or reverse the decision and/or recommended disposition(s) of the disciplinary hearing officer, dismiss the disciplinary report if and only if one of the reasons set out in Procedure B. 10 exists, or remand the matter to the disciplinary hearing officer

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for a new hearing or to the Shift Supervisor or Unit Manager who received the disciplinary report for an attempt at an informal resolution. The Chief Administrative Officer, or designee, may not reverse a decision or remand a matter unless the prisoner has been found guilty of a disciplinary charge and may not increase the severity of the disposition recommended by the disciplinary hearing officer.

21. The prisoner shall be notified in writing as to the decision on the appeal of his/her case by the Chief Administrative Officer, or designee (see Attachment F). The disposition(s) may not be imposed prior to the review, which must be completed within thirty (30) days of receipt of the appeal.
22. Any written waiver signed by a prisoner as part of the disciplinary process is final and may not be withdrawn.
23. Designated staff shall complete and maintain appropriate documentation for every disciplinary case in which a prisoner is found guilty. (see Attachment G, Disciplinary Report Information, Attachment H, Disciplinary Segregation Report to Commissioner and Attachment I, Disciplinary Chronology)
24. If, at any time during the disciplinary process, the prisoner is found not guilty or the disciplinary report is dismissed, the disciplinary report and any other disciplinary documents shall be forwarded to the Chief Administrative Officer, or designee, who shall examine the documents and then destroy them. In a case in which a prisoner is found guilty of some, but not all charges, the parts of the disciplinary documents listing the charges for which the prisoner was found not guilty or which were dismissed shall be blacked out after review by the Chief Administrative Officer, or designee. Documents, other than disciplinary documents, which describe the incident, such as emergency observation documents, log book entries, etc., shall not be destroyed, or blacked out.
25. The Chief Administrative Officer, or designee, may at any time modify a disposition of disciplinary segregation time to a disposition of disciplinary restriction time of the same number of days.
26. The Chief Administrative Officer, or designee, may at any time suspend some or all of any disciplinary disposition that the prisoner has accumulated if the prisoner has demonstrated an extended period of good behavior. The suspension may be revoked in whole or in part by the Chief Administrative Officer, or designee, if the prisoner is found guilty of having committed a new violation at any time.
27. After consultation with appropriate medical or mental health staff, the Chief Administrative Officer, or designee, may at any time suspend some or all disciplinary segregation time or disciplinary restriction time that a prisoner has accumulated to the extent necessary to address medical or mental health needs.

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After consultation with appropriate medical or mental health staff, the suspension may be revoked in whole or in part by the Chief Administrative Officer, or designee, if the prisoner's medical or mental health condition allows.

28. The Chief Administrative Officer, or designee, shall review all disciplinary hearings and dispositions to assure conformity with Departmental Policy.

#### **Procedure D: Classes of Violations and Dispositions**

1. The purpose of this section is to define and grade violations in order to limit official discretion and to give fair warning to the prisoner of what conduct is prohibited and what the possible consequences of disciplinary violations are. It is also the purpose of this section to prescribe punishments that are proportionate to the seriousness of the violation.
2. Disciplinary segregation is confinement in a cell, room or other living space assigned to a prisoner on disciplinary segregation status. A prisoner on disciplinary segregation status shall be treated in accordance with Departmental Policy 15.2, Disciplinary Segregation. Disciplinary restriction is confinement to the prisoner's own cell, room, or other living space. Privileges, including work, programming, and recreation, are suspended, unless specified otherwise. Prisoners on disciplinary restriction shall not be allowed any electronic entertainment equipment or musical instruments.
3. Violations are divided into four (4) categories: A, B, C, and D, with A being the most serious violation. A prisoner found guilty of more than one (1) charge may receive concurrent or consecutive dispositions. Dispositions received for new violations are consecutive to any dispositions received for prior violations and not yet completed.
4. If a prisoner commits another violation within one hundred and twenty (120) days of committing a previous violation of the same class or a higher class, the prisoner may receive a disposition for a "multiple violation" of the class of the more recent violation and receive a disposition allowed for the next higher class of violation, e.g., a Class "C" violation may be disposed of as a Class "B" violation upon a finding of guilt if the prisoner committed a Class "C" or higher class violation within the 120 days prior to the commission of the new violation.
5. In any case, the disciplinary hearing officer may recommend the imposition of a punishment and the suspension of all or some of its execution. The Chief Administrative Officer, or designee, may accept or reject the recommendation. If the prisoner commits another violation within ninety (90) days from the date of suspension of the punishment by the Chief Administrative Officer, or designee, the suspension may be revoked in whole or in part by the Chief Administrative Officer, or designee, upon a finding of guilt of the new violation.

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6. Non-contact visitation may be required by the Chief Administrative Officer for a prisoner who is found guilty of a disciplinary drug or tobacco violation (Test, Refusing to Take Drug Test; Trafficking; Trafficking Marijuana; Under the Influence or Taking of Substance {other than an alcoholic substance}; Smoking) or found guilty of a criminal violation of Trafficking in Prison Contraband or Trafficking in Tobacco. Such a restriction may be imposed for either a definite or indefinite period of time.
7. A prisoner found guilty of a Class A or B disciplinary violation shall be required to dispose of all grandfathered personal property within thirty (30) days by one of the pre-approved disposition methods for non-allowable property (mailing the property out at the prisoner's expense, sending the property out with a visitor, or donating the property to the facility for disposition).
8. The following are the standard punishments that may be imposed upon a finding of guilt of a violation.

**Class A Dispositions:**

1. Disciplinary segregation or disciplinary restriction or both, up to a total of thirty (30) days.
2. Loss of good time or deductions, up to thirty (30) days.
3. Loss of privileges for no more than thirty (30) days.
4. Assignment of extra work in lieu of recreation for no more than thirty (30) days.
5. Monetary sanction, up to \$100.00.
6. Restitution (to replace or repair property destroyed or damaged or to pay the cost of medical care).
7. Counseling/verbal reprimand/warning.
8. Any combination of the above.

**Class B Dispositions:**

1. Disciplinary segregation or disciplinary restriction or both, up to a total of twenty (20) days.
2. Loss of good time or deductions, up to twenty (20) days.
3. Loss of privileges for no more than twenty (20) days.

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4. Assignment of extra work in lieu of recreation for no more than twenty (20) days.
5. Monetary sanction, up to \$75.00.
6. Restitution (to replace or repair property destroyed or damaged or to pay the cost of medical care).
7. Counseling/verbal reprimand/warning.
8. Any combination of the above.

**Class C Dispositions:**

1. Disciplinary segregation or disciplinary restriction or both, up to a total of ten (10) days.
2. Loss of good time or deductions, up to ten (10) days.
3. Loss of privileges for no more than ten (10) days.
4. Assignment of extra work in lieu of recreation for no more than ten (10) days.
5. Monetary sanction, up to \$50.00.
6. Restitution (to replace or repair property destroyed or damaged or to pay the cost of medical care).
7. Counseling/verbal reprimand/warning.
8. Any combination of the above.

**Class D Dispositions:**

1. Disciplinary segregation or disciplinary restriction or both, up to a total of five (5) days.
2. Loss of good time or deductions, up to five (5) days.
3. Loss of privileges for no more than five (5) days.
4. Assignment of extra work in lieu of recreation for no more than five (5) days.

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5. Monetary sanction, up to \$25.00.
6. Restitution (to replace or repair property destroyed or damaged or to pay the cost of medical care).
7. Counseling/verbal reprimand/warning.
8. Any combination of the above.

**Procedure E: Acts Prohibited (Violations)**

**Absence.** Absence from any work, education, or other program assignment without authorization from the program Supervisor, or Unit Manager, or designee. Class D.

**Alcohol.** Trafficking, possession or use of any alcoholic beverage or the adulteration of any food or drink for the purpose of making an intoxicating beverage. Class A.

**Administrative Burden.** Performing any action with the intention to cause or with the knowledge it will cause a waste of Department of Corrections staff time. Class C.

**Animal.** Mistreatment of an animal, including abuse, neglect, or harassment. Class A.

**Assessment.** Refusing or failing to appropriately participate in a required program screening or assessment, such as substance abuse screening, sex offender risk assessment, etc. Class A.

**Bodily Injury.** Inflicting bodily injury on oneself or another person or any attempt to inflict bodily injury on oneself or another person. Class A.

**Body Fluid.** Spitting, excreting, urinating on/at another individual, throwing any body fluid or any fluid appearing to be or stated to be a body fluid on/at another individual, or contaminating any item with any body fluid or any fluid appearing to be or stated to be a body fluid. Body fluid includes feces, urine, blood, saliva, vomit, semen, or any other human body fluid. Class A.

**Business.** Engaging in any business activity or profession without authorization from the Chief Administrative Officer. Class B.

**Canine.** Mistreatment of a Department canine, including inflicting bodily injury, threatening to strike or otherwise injure, or harassment, or interference with the

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canine's performance of its duties, including blocking or hindering its access, substantially restricting its movement, and disguising a scent. Class A.

**Communicating.** Communicating, directly or indirectly, with any person who the prisoner is prohibited from having contact with as a condition of probation, or supervised release for sex offenders, by a court order, or as a result of having been forbidden to harass that person pursuant to 17-A M.R.S.A. Section 506-A. Class A.

**Community Release Violation.** Any violation of a community release program agreement, e.g., public service release, work release, education release, furlough leave, furlough pass, supervised community confinement. Class A.

**Count.** Intentional non-presence at, interference with, delay of, or refusal to cooperate with the taking of a prisoner count, formal or informal. Class A.

**Counterfeiting.** Counterfeiting, forging, or reproduction of any document, article of identification, stock or other security, cash, check, money order, or any other legal currency, telephone calling card, credit, debit or ATM card, or prisoner store card, debit card, or money transfer, or the possession of any counterfeit, forged, or reproduced document, article of identification, stock or other security, cash, check, money order, or any other legal currency, telephone calling card, credit, debit or ATM card, or prisoner store card, debit card, or money transfer. Class A.

**Currency.** Possession or use of any article of identification, stock or other security, cash, check, money order, or any other legal currency, telephone calling card, credit, debit, or ATM card, or prisoner store card, debit card, or money transfer, bank account number, credit, debit, or ATM card number, telephone PIN number, computer password, or any other PIN number, password, or access code unless authorized by the Commissioner of Corrections. Class A.

**Deadly Instrument.** Possession of, or the trafficking in, any firearm, knife, weapon, sharpened instrument, chemical, explosive, ammunition, or device which could be a deadly instrument. Class A.

**Debt.** Incurring any debt, to include but not be limited to, subscribing to a magazine or ordering a book without pre-payment, taking out a loan, applying for a credit card, or any other action designed to obtain goods or services prior to paying for them. Class B.

**Deception.** Creating or reinforcing a false impression, including a false impression as to identity, value, knowledge, or intention, for the purpose of depriving another party of money or other property. Class A

**Demonstration.** Organizing, engaging in, or encouraging any unauthorized group demonstration. Class A.

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**Destruction of Property (More than \$50).** Willful destruction of any property not the prisoner's, of which the cost of replacement or repair, including labor, is in excess of \$50.00. Class A.

**Destruction of Property (\$50 or less).** Willful destruction of any property not the prisoner's, of which the cost of replacement or repair, including labor, is \$50.00 or less. Class B.

**Disorderly Behavior.** Failure of the prisoner to conduct himself/herself in an orderly and courteous manner at all times. Class C.

**Disregard of Orders, Encouraging.** Encouraging others to disregard orders, instructions, rules, or assignments. Class B.

**Disturbance, Property Damage or Personal Injury.** Planning, attempting to create, or creating a disturbance resulting in property damage or personal injury to others, or the reasonable result of which, if not quelled, could be the destruction of property or personal injury to others. Class A.

**Disturbance.** Planning, attempting to create, or creating a disturbance involving no destruction of property or injury to another person or threat of such destruction or injury. Class B.

**DNA Sample, Refusing to Provide.** Refusing to cooperate with the collection of a DNA sample as required by Title 25 M.R.S.A. Section 1574. Class A.

**Electronic Communication Devices.** Possession of any electronic communication device, including, but not limited to, cell phone, radio, or pager, without authorization from the Commissioner. Class A

**Equipment.** Using machinery, computers, or other equipment without authorization from the staff in charge of the equipment or using authorized machinery, computers, or other equipment for an unauthorized purpose. Class B.

**Escape.** Escape, attempting to escape, or planning an escape. Class A.

**Escape Tool.** Possession of any tool, item, or material which could reasonably be expected to aid in an escape or escape attempt. Class A.

**Evidence.** Willful destruction or concealment of any item that is evidence or appears to be evidence of a disciplinary violation or a crime. Class A.

**Exposure.** Exposing one's private body parts to another person for the purpose of causing discomfort or offense to the other person or gratifying sexual desire. Class A.

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**Extortion.** The demanding and/or receiving anything of value, in return for protection of any kind, by threat of bodily harm or duress. Class A.

**False Statement (Force or Duress).** Soliciting a false statement, whether verbal or written, by any means involving force or duress. Class A.

**False Statement.** Making or soliciting a false statement, whether verbal or written. Class B.

**Fighting.** Any physical encounter between two or more persons the object of which is bodily injury. Class B.

**Fire (Intentional).** The intentional ignition of combustible materials, the reasonable result of which could be injury to any person or the destruction of property. Class A.

**Fire (Negligence).** Negligent ignition of combustible materials, the reasonable result of which could be property damage or personal injury. Class B.

**Gambling.** Gambling, including participation in legal gambling, such as state sponsored lottery games, or possession of instruments of gambling. Class B.

**Giving or Receiving.** The giving or receiving of any article of identification, stock or other security, cash, check, money order, or any other legal currency, telephone calling card, credit, debit, or, ATM card, store card, or prisoner debit card, bank account number, telephone calling card or PIN number, or credit, debit, or ATM card number, or other item between a prisoner and another prisoner, visitor, or volunteer. The giving or receiving of any of the above between a prisoner and the family or friend of another prisoner or between a prisoner and staff without authorization from the Chief Administrative Officer. Class C.

**Harassment.** Harassment by words, gesture, or other behavior of any person that is motivated by the person's race, color, ethnicity, national origin, religion, creed, gender, sexual orientation, or similar circumstance, physical or mental disability, or crime. Class A.

**Horseplay.** Engaging in horseplay and physical encounters not part of an organized recreation program. This violation does not include physical encounters the object of which is threat of injury or actual injury to another prisoner. Class D.

**Hostage Taking.** Taking of or being an accessory to the taking of a hostage or substantially restricting the movement of another person. Class A

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**Housing Regulations.** Failure to abide by housing regulations not specifically covered in this policy but approved for use in the housing area concerned and conspicuously posted in the area. Class D.

**Hygiene.** Failure to maintain personal hygiene and/or failure to maintain assigned living space in a sanitary and safe condition, as prescribed by the housing area rules. Class B.

**Identification.** Failure to display issued identification in the required manner.  
Class C

**Influencing Staff.** Promising, offering, or giving to any department staff any monetary or other benefit for the purpose of influencing such staff in the performance of official duties. Class A.

**Informal or Formal Resolution.** Failing to abide by an informal or formal resolution of a disciplinary incident. Class B.

**Interference.** Interfering or encouraging others to interfere with any staff in the performance of his/her duties, to include passive physical resistance. Class B.

**Leaving a Place of Assignment.** Leaving a place of assignment or otherwise moving through the correctional facility without authorization from the staff in charge of the place of assignment. Class C.

**Mail.** Violating mail rules. Class B.

**Martial Arts.** Demonstrating or practicing wrestling, boxing, or other martial arts without authorization. Class C.

**Medication.** Unauthorized possession, giving, receipt, concealment, or hoarding of any medication or any medication related item, or abuse of any medication or medication related item. Class B.

**Money.** Failure to deposit money earned, or inherited by or otherwise credited to the prisoner into the prisoner's account at the facility. Class D.

**Noises.** Making loud noises, except for sounds made as part of an athletic or similar event, e.g., clapping, cheering, etc. Class D.

**Order, Refusing to Obey.** Refusing to obey any lawful order, instruction, rule, or assignment. Class C.

**Order, Negligent Failure to Obey.** Negligent failure to carry out any lawful order, instruction, or assignment. Class D.

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**Possession.** Possession of any item which was not issued to the prisoner, sold through the commissary, or otherwise authorized to be in the prisoner's possession or unauthorized alteration of an authorized item. Class C.

**Provocation.** Provocation by words or gesture of any person. Class C.

**Rioting.** Rioting or being an accessory to a riot. Class A.

**Rules.** Failure to abide by the rules of any program not specifically covered in this policy. Class D.

**Running.** Running, except when engaged in an authorized activity or during an emergency. Class C.

**Safety.** Failure to follow any safety procedure or use proper safety clothing or equipment provided by the correctional facility, whether during practice or actual performance of work or other activity. Class C.

**Security Threat Group Affiliation.** Being affiliated with, possessing or displaying any materials, symbols, colors, or pictures of any identified security threat group, or engaging in behavior that is uniquely or clearly associated with a security threat group. Class A.

**Sexual Activity by Force or Duress.** Any sexual activity involving duress, force, or violence. Class A.

**Sexual Activity Not under Duress or Force.** Any sexual activity not involving force, violence, or duress. Class B.

**Smoking.** Trafficking, possession or use of tobacco, or trafficking or possession of tobacco related devices, including, but not limited to, pipes, lighters, matches, cigarette papers, and cigarette rollers, without authorization from the Commissioner. Class B.

**Soliciting.** Soliciting money or other property from another party other than a family member without authorization from the Chief Administrative Officer. Class B.

**Tampering.** Tampering with, blocking, or obtaining control of any safety or security device, including, but not limited to, any locking device, key or key card, door, fire alarm, smoke alarm, heat sensor, fire sprinkler, security touch screen, radio, or causing a false alarm. Class A.

**Tattooing.** Tattooing or any other intentional puncturing of one's own skin or the skin of another or the possession of tattooing equipment. Class A.

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**Telephone.** Violating telephone rules. Class B.

**Test, Refusing to Take Alcohol Test.** Refusing or failing to take an alcohol test, refusing or failing to provide an adequate specimen, tampering with the specimen, or refusing or failing to follow instructions for providing an adequate and uncontaminated specimen. Class A.

**Test, Refusing to Take Drug Test.** Refusing or failing to take a drug test, refusing or failing to provide an adequate specimen, tampering with the specimen, or refusing or failing to follow instructions for providing an adequate and uncontaminated specimen. Class A.

**Theft (More than \$25).** Theft of the property of another party, where the value of such property is greater than \$25.00. Class A.

**Theft (\$25 or less).** Theft of the property of another party, where the value of such property is \$25.00 or less. Class B.

**Threatening.** Threatening to strike or otherwise injure another individual, to include direct or indirect communication. Class B.

**Throwing.** Throwing any object or substance. Class B.

**Trafficking.** Trafficking of a drug, regardless of whether or not prescribed to the prisoner, or possession or use of a prescription drug not prescribed to the prisoner by the facility healthcare staff, or possession or use of a non-prescribed scheduled drug of the W, X, Y classification, or related paraphernalia, as defined by 17-A M.R.S.A. Class A.

**Trafficking Marijuana.** Trafficking, possession or use of a non-prescribed Schedule Z substance or related paraphernalia (marijuana or its derivatives and paraphernalia related to its use). Class A.

**Under the Influence or Taking of Substance.** Drinking, sniffing, ingesting, or otherwise taking and/or being under the influence of any alcoholic, chemical, or medicinal substance, other than one prescribed to the prisoner by facility healthcare staff. Class A.

**Visiting.** Violating visiting rules. Class B.

**Waste (More than \$10).** Waste, misuse, or negligent destruction of State property with a value in excess of \$10.00. Class C.

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**Waste (\$10 or less).** Waste, misuse, or negligent destruction of State property, with a value of \$10.00 or less. Class D.

**Work, Refusal.** Refusing to work, failing to work as instructed, or leaving work without permission. Class B.

**Written Communication.** Unauthorized passing, giving or receiving of any written communication without authorization. Class C.

**THE AFOREMENTIONED VIOLATIONS INCLUDE THE PLANNING OF, ATTEMPT OF, AND/OR PARTICIPATION AS AN ACCESSORY IN THE VIOLATION.** An attempt is an act which constitutes a substantial step in a course of conduct that will end in the commission of a prohibited act. A prisoner is an accessory if he/she knowingly provides assistance to another prisoner committing a violation.

**For purposes of any violation which includes possession as an element, possession means to have physical possession or otherwise exercise control over an item on the prisoner's person or in his/her assigned area, e.g., room, cell, work area, or locker.**

#### **Procedure F: Classification Review**

1. Conduct constituting a disciplinary violation may result in changing a prisoner's custody level, housing status, and/or programs, or the taking of any other action based on a determination that such action is in the interest of the prisoner, in the interest of the prisoner population, or in the interest of safety, security, or orderly management of the facility, regardless of whether the disciplinary process is initiated and, if initiated, regardless of whether the conduct leads to an informal resolution or formal resolution of the violation. A dismissal or a finding of not guilty does not preclude taking any such action. Such action is not in the nature of punishment.

## **VII. PROFESSIONAL STANDARDS**

### **ACA:**

- ACI – 4-4226**      **Written rules of inmate conduct specify acts prohibited within the institution and penalties that can be imposed for various degrees of violation.**
- ACI – 4-4227**      **There is a written set of disciplinary procedures governing inmate rule violations.**
- ACI – 4-4228**      **A rulebook that contains all chargeable offenses, ranges of penalties, and disciplinary procedures is given to each inmate and staff member and is translated into those languages spoken by significant numbers of inmates. Signed acknowledgement of receipt of the rulebook is maintained in the**

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inmate's file. When a literacy or language problem prevents an inmate from understanding the rulebook, a staff member or translator assists the inmate in understanding the rules.

- ACI – 4-4229** All personnel who work with inmates receive sufficient training so that they are thoroughly familiar with the rules of inmate conduct, the rationale for the rules, and the sanctions available.
- ACI – 4-4230** There are written guidelines for resolving minor inmate infractions, which include a written statement of the rule violated and a hearing and decision within seven days, excluding weekends and holidays, by a person not involved in the rule violation; inmates may waive their appearance at the hearing.
- ACI – 4-4231** Written policy, procedure, and practice provide that, where an inmate allegedly commits an act covered by criminal law, the case is referred to appropriate court or law enforcement officials for consideration for prosecution.
- ACI – 4-4232** Written policy, procedure, and practice provide that when rule violations require formal resolution, staff members prepare a disciplinary report and forward it to the designated Supervisor.
- ACI – 4-4233** Disciplinary reports prepared by staff members include, but are not limited to, the following information:
- specific rule(s) violated
  - a formal statement of the charge
  - any unusual inmate behavior
  - any staff witnesses
  - any physical evidence and its disposition
  - any immediate action taken, including the use of force
  - reporting staff member's signature and date and time of report
- ACI – 4-4234** Written policy, procedure, and practice specify that, when an alleged rule violation is reported, an appropriate investigation is begun within 24 hours of the time the violation is reported and completed without reasonable delay, unless there are exceptional circumstances for delaying the investigation.
- ACI – 4-4235** Within the disciplinary procedures document there is a provision for prehearing detention of inmates who are charged with a rule violation. The inmate's pre-hearing status is reviewed by the warden/superintendent or designee within 72 hours, including weekends and holidays.
- ACI – 4-4236** Written policy, procedure, and practice provide that an inmate charged with a rule violation receives a written statement of the charge(s), including a description of the incident and specific rules violated. The inmate is given the statement at the same time that the disciplinary report is filed with the disciplinary committee but no less than 24 hours prior to the disciplinary hearing. The hearing may be held within 24 hours with the inmate's written consent.
- ACI – 4-4237** Written policy, procedure, and practice provide that an inmate may waive the right to a hearing provided that the waiver is documented and reviewed by the chief executive officer or designee.

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- ACI – 4-4238** Written policy, procedure, and practice provide that inmates charged with rule violations are scheduled for a hearing as soon as practicable but no later than seven days, excluding weekends and holidays, after being charged with a violation. Inmates are notified of the time and place of the hearing at least 24 hours in advance of the hearing.
- ACI – 4-4239** Written policy, procedure, and practice provide for postponement or continuance of the disciplinary hearing for a reasonable period and good cause.
- ACI – 4-4240** Written policy, procedure, and practice provide that disciplinary hearings on rule violations are conducted by an impartial person or panel of persons. A record of the proceedings is made and maintained for at least six months.
- ACI – 4-4241** Written policy, procedure, and practice provide that inmates charge with rule violations are present at their hearings unless they waive that right in writing or through their behavior. Inmates may be excluded during the testimony of any inmate whose testimony must be given in confidence; the reasons for the inmate's absence or exclusion are documented.
- ACI – 4-4242** Written policy, procedure, and practice provide that inmates have an opportunity to make a statement and present documentary evidence at the hearing and can request witnesses on their behalf; the reasons for denying such a request are stated in writing.
- ACI – 4-4243** Written policy, procedure, and practice provide that a staff member or agency representative assists inmates at disciplinary hearings if requested. A representative is appointed when it is apparent that an inmate is not capable of collecting and presenting evidence effectively on his or her own behalf.
- ACI – 4-4244** Written policy, procedure, and practice provide that the disciplinary committee's decision is based solely on information obtained in the hearing process, including staff reports, the statements of the inmate charged, and evidence derived from witnesses and documents.
- ACI – 4-4245** Written policy, procedure, and practice provide that a written record is made of the decision and the supporting reasons, and that a copy is given to the inmate. The hearing record and supporting documents are kept in the inmate's file and in the disciplinary committee's records.
- ACI – 4-4246** Written policy, procedure, and practice provide that if an inmate is found not guilty of an alleged rule violation, the disciplinary report is removed from all of the inmate's files.
- ACI – 4-4247** Written policy, procedure, and practice provide for review of all disciplinary hearings and dispositions by the warden/superintendent or designee to assure conformity with policy and regulations.
- ACI – 4-4248** Written policy, procedure, and practice grant inmates the right to appeal the decisions of the disciplinary committee to the warden/superintendent or designee. Inmates have up to 15 days of receipt of the decision to submit an appeal. The appeal is decided within 30 days of its receipt, and the inmate is promptly notified in writing of the results.

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- ACI – 4-4252** Written policy, procedure, and practice provide that an inmate is placed in disciplinary detention for a rule violation only after a hearing by the disciplinary committee or hearing examiner.
- ACI – 4-4255** There is a sanctioning schedule for institutional rule violations. Continuous confinement for more than 30 days requires the review and approval of the warden/superintendent or designee. Inmates held in disciplinary detention for periods exceeding 60 days are provided the same program services and privileges as inmates in administrative segregation and protective custody.
- ACI – 4-4399** There is consultation between the facility and program administrator (or a designee) and the responsible health care practitioner (or designee) prior to taking any action regarding chronically ill, physically disabled, geriatric, seriously mentally ill, or developmentally disabled offenders in the following areas:
- housing assignments
  - program assignments
  - disciplinary measures
  - transfers to other facilities
- When immediate action is required, consultation to review the appropriateness of the action occurs as soon as possible, but no later than seventy-two hours.
- 4-ACRS-6C-01** There is a process for informal resolution of minor infractions of facility rules.
- 4-ACRS-6C-02** An offender charged with a major rule violation receives a written statement of the alleged violation(s), including a description of the incident and specific rules violated.
- 4-ACRS-6C-03** The facility's disciplinary process is defined and provides appropriate procedural safeguards, to include:
- Report of incident and charge
  - Notice
  - Time to prepare for hearing
  - Assistance as needed
  - Timely hearing
  - Opportunity to present evidence
  - Fair decision
  - Written notice of decision
  - Opportunity to appeal
- 4-ACRS-6C-04** The facility implements a system of progressive discipline.

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